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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LISA A.FILLERBROWN, RUSSELL D. KAUTZ, and
KENNETH MATTHEW GLOVER

Appeal 2010-003314
Application 09/775,042
Technology Center 2400

Before ALLEN R. MacDONALD, DAVID M. KOHUT, and
MICHAEL J. STRAUSS, *Administrative Patent Judges*.

STRAUSS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134(a) from final rejection of claims 1-22, 30, 32, 33, 36, 37, 40, 45 and 46. We have jurisdiction under 35 U.S.C. § 6(b). We *affirm-in-part*.

Introduction

The claims are directed to a method and system for accessing software applications executing on a remote server on a wireless computer network using a thin client. Spec. 1. The method includes receiving a data packet having data and associating the data with a software application executing on a first device and generating display information for use by a second device. App. Br. 10-11. The first and second devices perform wireless transmission to one another through a wireless router using first and second wireless protocols. App. Br. 11.

Exemplary Claim(s)

Exemplary claim 1 under appeal reads as follows:

1. A method of processing a packet in a wireless network, comprising:
 - receiving a data packet having data therein at a first device capable of wirelessly communicating with a second device;
 - associating the data with a one of a plurality of network enabled software applications executing on the first device and generating display information in response to processing by the one of the plurality of network enabled software applications for use by the second device in producing a display on the second device; and
 - the first and second devices performing wireless transmissions to one another through a wireless router, wherein performing wireless transmissions to one another through the wireless router further comprises,

providing a first wireless communication link between the first device and the wireless router in accordance with a first wireless protocol, and

providing a second wireless communication link between the wireless router and the second device in accordance with a second wireless protocol.

*Rejections on Appeal*¹

The Examiner rejected claims 1-22, 30, 32, 33, 36, 37, 40, 45 and 46 under 35 U.S.C. §102(e) as being anticipated by Lincke (U.S. 6,397,259 B1, May 28, 2002).

The Examiner further rejected claims 1-22, 30, 32, 33, 36, 37, 40, 45 and 46 as unpatentable under 35 U.S.C. §103(a) as being obvious over the combination of Gershman (U.S. 6,356,905 B1, Mar, 2002) in view of Jones (U.S. 6,108,314, Aug. 22, 2000).²

¹ Separate patentability is not argued for claims 2-22, 30, 32, 33, 36, 37 and 40. “A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.”

37 C.F.R. § 41.37(c)(1)(vii)(last sentence). Further, merely restating with respect to a second claim an argument, previously presented with respect to a first claim, is not an argument for separate patentability of the two claims.

² While the Examiner makes reference to the Dolan reference in the outstanding Final Office Action in detailing the rejection under 35 U.S.C. §103(a) (FOA 4) and while Appellants address Dolan in their Brief (App. Br. 48-62), the Examiner’s Answer omits any reference to or reliance on Dolan. We address the rejection as set forth in the Examiner’s Answer. We further note that any allegation that the Examiner’s Answer includes a new ground of rejection has been waived for failure of Appellants to timely raise the issue by way of petition under 37 CFR 1.181(a).

Appellants' Contentions

Rejections under 35 U.S.C. §102(e):

1. Appellants contend that the Examiner erred in rejecting independent claim 1 under 35 U.S.C. §102(e) as anticipated by Lincke because it does not disclose a first device (e.g., web server) that is capable of wireless communications with a second device (e.g., wireless device) or that a wireless communication link is provided between the wireless router (e.g., proxy server) and the first device (web server). App. Br. 30-32.

2. Appellants contend that the Examiner erred in rejecting dependent claim 45 under 35 U.S.C. §102(e) on the basis that Lincke does not disclose amplifying a packet. App. Br. 33.

3. Appellants contend that the Examiner erred in rejecting dependent claim 46 under 35 U.S.C. §102(e) on the basis that Lincke does not disclose a device detecting that the received wireless transmission is adequately strong to reach a known destination. App. Br. 34-35.

Rejections under 35 U.S.C. §103(a):

4. Appellants contend that the Examiner has erred in rejecting claims under 35 U.S.C. §103(a) because “the combination of *Gershman* and *Jones* (and additional combination with *Dolan*) is conclusory, and no articulated reasoning with some rational underpinning to support the combination has been provided.” (Emphasis in the original) App. Br. 48, 53-54.

5. Appellants also contend that the Examiner has erred in rejecting claims under 35 U.S.C. §103(a) because the combination of *Gershman* and

Jones and Dolan fails to disclose using two different wireless protocols.
App. Br. 54-57.

6. Appellants contend that the Examiner erred in rejecting dependent claim 45 35 U.S.C. §103(a) on the basis that Jones does not disclose amplifying a packet. App. Br. 58-60.

7. Appellants contend that the Examiner erred in rejecting dependent claim 46 35 U.S.C. §103(a) on the basis that Jones does not disclose a device detecting that the received wireless transmission is adequately strong to reach a known destination. App. Br. 60-61.

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' arguments (Appeal Brief and Reply Brief) that the Examiner has erred. We disagree with Appellants' conclusions in connection with all but the rejection of claim 46 under 35 U.S.C. §103(a).

In connection with contention 1, we agree with Appellants. With reference to Fig. 1 of Lincke, if the claimed wireless router and first and second devices correspond to Proxy Server 180, Web Server 140 and Wireless Communications Device 100 of Lincke, then the reference fails to disclose the claimed first *wireless* communication link between the wireless router and the first device. We therefore conclude that the Examiner erred in rejecting claim 1 under 35 U.S.C. §102(e).³ As independent claims 33,

³ Should prosecution be continued, the Examiner should consider whether substitution of a wireless communication link for a wired communication link was well-known and capable of instant and unquestionable demonstration at the time of the invention.

36, 37 and 40 include similar language, the rejection of those claims under 35 U.S.C. §102(e) is also improper.

Since we find error in the Examiner's rejection of claim 1 under 35 U.S.C. §102(e), we need not address contentions 2 and 3 in connection with claims 45 and 46 which depend from claim 1.

Addressing contention 4, we disagree with Appellants. As pointed out by the Examiner, Gershman and Jones both address computer communication networks including wireless connectivity of mobile devices.

Ans. 4. We find no error in the Examiner's analysis. We additionally find that incorporating the wireless routers of Jones into the network of Gershman provides results that would have been predictable to one of ordinary skill in the art. "[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007). The test of non-obviousness is not whether one reference can be bodily inserted into another, but, rather, what the references, when considered together, would have suggested to one of ordinary skill in the art, *In re Keller*, 642 F.2d 413, 425 (CCPA 1981), who is a person of ordinary creativity and not an automaton, *KSR*, 550 U.S. at 421, and whose inferences and creative steps we may consider, *id.* at 418.

In connection with contention 5, we find that the claims do not require that the first wireless protocol be different from the second wireless protocol. Accordingly, we need not decide whether the combination of Gershman and Jones (and Dolan) discloses using two different wireless protocols.

In connection with contention 6, we agree with Appellants that Jones does not explicitly disclose that the packets are amplified *in hac verba*. However, we find that amplification of the packets is an inherent feature of the devices detailed in the cited portion of Jones. As such, we find no merit with this contention of error.

Finally, in connection with contention 7, we agree with Appellants that the portion of Jones cited by the Examiner in rejecting claim 46 does not disclose detecting that a wireless transmission received from a first device is adequately strong to reach a second device and not amplifying the transmission before transmitting it to the second device. Accordingly, we find that the Examiner erred in rejecting claim 46 under 35 U.S.C. §103(a).

CONCLUSIONS

- (1) The Examiner erred in rejecting claims 1-22, 30, 32, 33, 36, 37, 40, 45 and 46 under 35 U.S.C. §102(e) as being anticipated by Lincke.
- (2) The Examiner has not erred in rejecting claims 1-22, 30, 32, 33, 36, 37, 40, and 45 as unpatentable under 35 U.S.C. §103(a) as being obvious over the combination of Gershman in view of Jones.
- (3) The Examiner erred in rejecting claim 46 as unpatentable under 35 U.S.C. §103(a) as being obvious over the combination of Gershman in view of Jones.
- (4) Claims 1-22, 30, 32, 33, 36, 37, 40, and 45 are not patentable.
- (5) The rejections of claim 46 are reversed.

DECISION

The rejection of claims 1-22, 30, 32, 33, 36, 37, 40, 45 and 46 under and 45 under 35 U.S.C. §102(e) as anticipated by Lincke is **reversed**.

The rejection of claims 1-22, 30, 32, 33, 36, 37, 40 and 45 as unpatentable under 35 U.S.C. §103(a) as being obvious over Gershman in view of Jones is **affirmed**.

The rejection of claim 46 as unpatentable under 35 U.S.C. §103(a) as being obvious over Gershman in view of Jones is **reversed**.

AFFIRMED-IN-PART

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